

Surface Mining Reclamation and Enforcement, Interior

§ 870.12

“Moist” refers to coal containing its natural inherent or bed moisture, but not including water adhering to the surface of the coal.

Mineral owner means any person or entity owning 10 percent or more of the mineral estate for a permit. If no single mineral owner meets the 10 percent rule, then the largest single mineral owner shall be considered to be the mineral owner. If there are several persons who have successively transferred the mineral rights, information shall be provided on the last owner(s) in the chain prior to the permittee, i.e. the person or persons who have granted the permittee the right to extract the coal.

Reclaimed coal means coal recovered from a deposit that is not in its original geological location, such as refuse piles or culm banks or retaining dams and ponds that are or have been used during the mining or preparation process, and stream coal deposits. Reclaimed coal operations are considered to be surface coal mining operations for fee liability and calculation purposes.

Surface coal mining means the extraction of coal from the earth by removing the materials over the coal seam before recovering the coal and includes auger coal mining. For purposes of subchapter R, reclaiming coal operations are considered surface coal mining.

Ton means 2,000 pounds avoirdupois (0.90718 metric ton).

Total moisture means the measure of weight loss in an air atmosphere under rigidly controlled conditions of temperature, time and air flow, as determined according to either § 870.19(a) or § 870.20(a).

Underground coal mining means the extraction of coal from the earth by developing entries from the surface to the coal seam before recovering the coal by underground extraction methods, and includes in situ mining.

Value means gross value at the time of initial bona fide sale, transfer of ownership, or use by the operator, but does not include the reclamation fee required by this part.

[47 FR 28593, June 30, 1982, as amended at 53 FR 19726, May 27, 1988; 59 FR 28168, May 31, 1994; 60 FR 9980, Feb. 22, 1995; 62 FR 60142, Nov. 6, 1997; 73 FR 67631, Nov. 14, 2008]

§ 870.10 Information collection.

In accordance with 44 U.S.C. 3501 *et seq.*, the Office of Management and Budget (OMB) has approved the information collection requirements of part 870 and the OSM-1 Form and assigned control number 1029-0063. The information is used to maintain a record of coal produced nationwide each calendar quarter, the method of coal removal, the type of coal, and the basis for coal tonnage reporting. Persons must respond to meet the requirements of SMCRA. A Federal agency may not conduct or sponsor, and you are not required to respond to, a collection of information unless it displays a currently valid OMB control number.

[73 FR 67631, Nov. 14, 2008]

§ 870.11 Applicability.

The regulations in this part apply to all surface and underground coal mining operations except—

(a) The extraction of coal by a landowner for his own noncommercial use from land owned or leased by him;

(b) The extraction of coal as an incidental part of Federal, State, or local government-financed highway or other construction;

(c) The extraction of coal incidental to the extraction of other minerals where coal does not exceed 16 $\frac{2}{3}$ percent of the total tonnage of coal and other minerals removed for commercial use or sale

(1) In accordance with part 702 of this chapter for Federal program States and on Indian lands or

(2) In any twelve consecutive months in a State with an approved State program until counterpart regulations pursuant to part 702 of this chapter have been incorporated into the State program and in accordance with such counterpart regulations, thereafter; and

(d) The extraction of less than 250 tons of coal within twelve consecutive months.

[47 FR 28593, June 30, 1982, as amended at 54 FR 52123, Dec. 20, 1989; 54 FR 52123, Dec. 20, 1989; 73 FR 67631, Nov. 14, 2008]

§ 870.12 Reclamation fee.

(a) The operator shall pay a reclamation fee on each ton of coal produced

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for sale, transfer, or use, including the products of in situ mining.

(b) The fee shall be determined by the weight and value at the time of initial bona fide sale, transfer of ownership, or use by the operator.

(1) The initial bona fide sale, transfer of ownership, or use shall be determined by the first transaction or use of the coal by the operator immediately after it is severed, or removed from a reclaimed coal refuse deposit.

(2) The value of the coal shall be determined F.O.B. mine.

(3) The weight of each ton shall be determined by the actual gross weight of the coal.

(i) Impurities that have not been removed prior to the time of initial bona fide sale, transfer of ownership, or use by the operator, excluding excess moisture for which a reduction has been taken pursuant to § 870.18, shall not be deducted from the gross weight.

(ii) Operators selling coal on a clean coal basis shall retain records that show run-of-mine tonnage, and the basis for the clean coal transaction.

(iii) Insufficient records shall subject the operator to fees based on raw tonnage data.

(c) If the operator combines surface mined coal, including reclaimed coal, with underground mined coal before the coal is weighed for fee purposes, the higher reclamation fee shall apply, unless the operator can substantiate the amount of coal produced by surface mining by acceptable engineering calculations or other reports which the Director may require.

(d) The reclamation fee shall be paid after the end of each calendar quarter

beginning with the calendar quarter starting October 1, 1977.

[47 FR 28593, June 30, 1982, as amended at 53 FR 19726, May 27, 1988; 59 FR 28169, May 31, 1994; 69 FR 56130, Sept. 17, 2004]

§ 870.13 Fee rates.

(a) *Fees for coal produced for sale, transfer, or use through September 30, 2007—*(1) *Surface mining fees.* The fee for anthracite, bituminous, and subbituminous coal, including reclaimed coal, is 35 cents per ton unless the value of such coal is less than \$3.50 per ton, in which case the fee is 10 percent of the value.

(2) *Underground mining fees.* The fee for anthracite, bituminous, and subbituminous coal is 15 cents per ton unless the value of such coal is less than \$1.50 per ton, in which case the fee is 10 percent of the value.

(3) *Surface and underground mining fees for lignite coal.* The fee for lignite coal is 10 cents per ton unless the value of such coal is less than \$5.00 per ton, in which case the fee charged is 2 percent of the value.

(4) *In situ coal mining fees.* The fee for in situ mined coal, except lignite coal, is 15 cents per ton based on Btu's per ton in place equated to the gas produced at the site as certified through analysis by an independent laboratory. The fee for in situ mined lignite is 10 cents per ton based on the Btu's per ton of coal in place equated to the gas produced at the site as certified through analysis by an independent laboratory.

(b) *Fees for coal produced for sale, transfer, or use from October 1, 2007, through September 30, 2012.* Fees for coal produced for sale, transfer, or use from October 1, 2007, through September 30, 2012, are shown in the following table:

Type of fee	Type of coal	Amount of fee
(1) Surface mining fee	Anthracite, bituminous, and subbituminous, including reclaimed.	(i) If value of coal is \$3.15 per ton or more, fee is 31.5 cents per ton. (ii) If value of coal is less than \$3.15 per ton, fee is 10 percent of the value.
(2) Underground mining fee	Anthracite, bituminous, and subbituminous.	(i) If value of coal is \$1.35 per ton or more, fee is 13.5 cents per ton. (ii) If value of coal is less than \$1.35 per ton, fee is 10 percent of the value.
(3) Surface and underground mining fee.	Lignite	(i) If value of coal is \$4.50 per ton or more, fee is 9 cents per ton. (ii) If value of coal is less than \$4.50 per ton, fee is 2 percent of the value.